

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WESLEY LEROY KAMMERER and  
DESIRE LYN KAMMERER,

Plaintiffs,

v.

THE CITY OF VANCOUVER, THE  
CITY OF VANCOUVER POLICE  
DEPARTMENT; OFFICER DARREN  
MCSHEA, in his official and private  
capacity and including any marital  
community; and OFFICER JOHN DOE  
NICHOLSON, in his official and private  
capacity and including any marital  
community,

Defendants.

CASE NO. C07-5509BHS

ORDER GRANTING  
DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT  
ON PLAINTIFFS' STATE  
LAW CLAIMS

This matter comes before the Court on the Defendants' Motion for Partial Summary Judgment Dismissal of Plaintiffs' State Law Claims (Dkt. 10). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants Defendant's Motion for Summary Judgment for the reasons stated herein.

**I. SUMMARY JUDGMENT STANDARD**

Summary judgment is proper only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an

essential element of a claim in the case on which the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must present specific, significant probative evidence, not simply “some metaphysical doubt.”). *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).

The determination of the existence of a material fact is often a close question. The court must consider the substantive evidentiary burden that the nonmoving party must meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The court must resolve any factual issues of controversy in favor of the nonmoving party only when the facts specifically attested by that party contradict facts specifically attested by the moving party. The nonmoving party may not merely state that it will discredit the moving party’s evidence at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W. Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*). Conclusory, nonspecific statements in affidavits are not sufficient, and missing facts will not be presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

## II. DISCUSSION

The instant motion for summary judgement is based on Plaintiffs’ alleged failure to comport with RCW 4.96.020(3) when initiating this cause of action against the City of Vancouver. Dkt. 10. Specifically, Plaintiffs are alleged to have failed to indicate their place of residence for a period of six months prior to the time their claims arose. *Id.* at 2. Defendants contend that the proper standard for the Court to apply to Plaintiffs’ failure to

1 provide this required information is strict compliance, and therefore Plaintiffs' claims  
2 should be dismissed. *Id.* Plaintiffs counter that the appropriate standard is substantial  
3 compliance and that Plaintiffs did substantially comply by providing information that  
4 could have led the City of Vancouver to understand that Plaintiffs had in fact lived at the  
5 address provided on the claim form for more than six months prior to the time their claims  
6 arose. Dkt. 16 at 5. Plaintiffs further contend that because they filed their claim using the  
7 City of Vancouver's pre-printed claim form and this form did not ask for Plaintiffs' place  
8 of residence for the prior six months that they were misled by Defendants and Defendants  
9 have therefore waived or are estopped from asserting this lack of information as a  
10 defense. *Id.* at 3.

11 RCW 4.96.020(3) states:

12 All claims for damages arising out of tortious conduct must locate  
13 and describe the conduct and circumstances which brought about the injury  
14 or damage, describe the injury or damage, state the time and place the injury  
15 or damage occurred, state the names of all persons involved, if known, *and*  
16 *shall contain the amount of damages claimed, together with a statement of*  
*the actual residence of the claimant at the time of presenting and filing the*  
*claim and for a period of six months immediately prior to the time the claim*  
*arose.*

17 Filing a notice of claim pursuant to RCW 4.96.020 is a condition precedent to the filing of  
18 a lawsuit in court against a government entity based on alleged tortious conduct  
19 committed by it or its employees. One of the purposes of this statute is to provide  
20 government entities time to investigate, evaluate and settle claims. *Medina v. Pub. Utility*  
21 *Dist. No. 1 of Benton County*, 147 Wn.2d 303, 310 (2002) (citing *Daggs v. City of Seattle*,  
22 110 Wn.2d 49, 57 (1988); *Williams v. State*, 76 Wn. App. 237, 248 (1994)). The content  
23 requirement of RCW 4.96.020 is to be liberally construed and a substantial compliance  
24 standard is to be applied. RCW 4.96.010(1). Courts apply a strict compliance standard to  
25 the procedural filing requirements of the statute.; *Burnett v. Tacoma City Light*, 124 Wn.  
26 App. 550, 558 (2005) (citing *Hintz v. Kitsap County*, 92 Wn. App. 10, 14 (1998); see also  
27 *Medina*, 147 Wn.2d at 310. If a party filing a claim pursuant to RCW 4.96.020 fails to  
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1 comply with the statute's requirements, the claim should be dismissed. *Burnett*, 124 Wn.  
2 App. at 558.

3 With regard to the requirement of providing a statement of the claimant's  
4 residence for a period of six months prior to the time the claim arose, the Court construes  
5 this as a substantive requirement to which the substantial compliance standard applies.  
6 While the Court is understanding of Plaintiffs' arguments for substantial compliance, the  
7 Court is bound by the precedent as established by the Washington Supreme Court in  
8 *Bringham v. City of Seattle*, 34 Wn.2d 786 (1949). In *Bringham* the plaintiff filed her  
9 claim against the City of Seattle pursuant to nearly identical claim filing provisions. The  
10 plaintiff in *Bringham* provided her address but did not indicate that this address was also  
11 her residence for the six months prior to the time her claim arose. *Bringham*, 34 Wn.2d at  
12 788. The court in *Bringham*, applying the substantial compliance standard, held that  
13 "required information which is totally absent from the claim cannot be supplied by any  
14 other method of construction, however liberal." 34 Wn.2d at 789 (citing *Sopchak v.*  
15 *Tacoma*, 189 Wash. 518 (1939).


16 Plaintiffs assert that they "did provide enough information to place the City on  
17 notice that they were residing at their disclosed residential address for years before the  
18 July 31, 2005 event took place." Dkt. 16 at 5. After careful review of Plaintiffs' Claim  
19 for Damages Form (Dkt. 11 at 8-24), the Court finds that Plaintiffs did not include  
20 enough information to determine the *actual place of residence* for a period of six months  
21 prior to the time their claim arose as is explicitly required by RCW 4.96.020(3). While  
22 Plaintiffs may be said to have substantially complied with the other substantive  
23 requirements of RCW 4.96.020, there does not appear to be an attempt to comply with the  
24 prior residency requirement of the statute. As a result, the Court finds *Bringham*  
25 controlling and cannot find that Plaintiffs substantially complied; therefore their claim  
26 should be dismissed.  
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1 Plaintiffs further contend that if the Court finds that they did not substantially  
2 comply with RCW 4.96.020, Defendants should be found to have waived or be estopped  
3 from asserting this defense because the City of Vancouver's pre-printed claim form did  
4 not request this information and was therefore misleading. Dkt. 16 at 3. The Court is not  
5 persuaded by this argument. Plaintiffs were represented by counsel at the time they  
6 presented their Claim for Damages Form to the City, and RCW 4.96.020 and its  
7 requirements are readily available and ascertainable to them and their attorney. "Where  
8 both parties can determine the law and have knowledge of the underlying facts, estoppel  
9 cannot lie." *Lybbert v. Grant County*, 141 Wn.2d 29, 35 (1999) (citing *Chem. Bank v*  
10 *Wash. Pub. Power Supply Sys.*, 102 Wn.2d 874, 905 (1984)). Plaintiffs' state law claims  
11 should be dismissed without prejudice, excluding Plaintiffs' claims for false arrest, false  
12 imprisonment, and assault, which are subject to a two-year statute of limitations which  
13 has already run and should be dismissed with prejudice. *Troxell v. Rainier Pub. Sch. Dist.*  
14 *No. 307*, 154 Wn.2d 345, 248-49 (2005).

### 15 III. ORDER

16 Therefore, it is **ORDERED** that Defendants' Motion for Partial Summary  
17 Judgment Dismissal of Plaintiffs' State Law Claims (Dkt. 10) is hereby **GRANTED**.  
18 Plaintiff's state law claims against Defendant are hereby **DISMISSED without**  
19 **prejudice** excepting Plaintiffs' claims for false arrest, false imprisonment, and assault  
20 which are **DISMISSED with prejudice**.

21 DATED this 24th day of March, 2008.

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25 BENJAMIN H. SETTLE  
26 United States District Judge  
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